

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151

RE: Gar Anderson
RR 2
Sterling Valley
Stowe, VT 05672

MEMORANDUM OF DECISION
Land Use Permit #5L0922-EB

and
Earle G. and Betty M. Anderson
4450 Madison
Trumbull, CT 06611
and
Moira Durnin
RR 2
Sterling Valley
Stowe, VT 05672

On September 21, 1987, an appeal was filed with the Environmental Board by Gar Anderson, Earle G. and Betty M. Anderson, and Moira Durnin from Land Use Permit #5L0922-EB issued June 23, 1987, by the District #5 Environmental Commission. The permit authorized the Permittees to create an eight-lot subdivision on 45 acres at Sterling Falls Gorge in Stowe, Vermont, and to construct 2,000 feet of project roadway and improvements to Town Highways #6 and 7. The permit prohibited the conveyance of Lots #1-5, construction of the roadway serving these lots, and construction of a proposed bridge over Sterling Gorge until the Commission has held amendment proceedings.

BACKGROUND OF THE CASE

Five of the eight lots in the proposed subdivision are located across Sterling Falls Gorge; a bridge across the gorge would be required to provide access to the lots. During the proceedings before the Commission, the Applicants entered into an option agreement with Paul Lowenstein and a local organization called RIPPLE (Intervenors). Under the agreement, the Applicants granted an option to purchase Lots #1-5 until December 1, 1988 and agreed not to construct a bridge over the gorge if the Intervenors exercise the option and purchase the land. Because of the possibility that the bridge would not be built and a decision regarding its aesthetic impact would be unnecessary, the Commission declined to issue either findings on the bridge or a final decision on the project. Believing that the option resulted in the Applicants' loss of full control over their property, the Commission prohibited the sale of Lots #1-5 until such time that full control was either in the hands of the Intervenors or returned to the Applicants.

The Applicants believe that the Commission erred in not issuing findings and a complete permit approving the construction of a bridge and in prohibiting the conveyance of Lots

#1-S until an amendment is issued. They contend that they provided extensive information to the Commission under Criterion 8 so that the Commission could make findings on the impact of the bridge on the aesthetics and natural and scenic beauty of the area.

On October 22, 1987, a prehearing conference was convened by Acting Chair Jan S. Eastman in Stowe, Vermont. Participating in the prehearing conference were the Applicants by Gar Anderson, the Agency of Natural Resources by Frederic Emigh, Esq., and the Stowe Planning Commission by Dorothy Rogers. At the prehearing conference the parties agreed that certain preliminary issues should be decided before the Board could proceed with a hearing on the merits: 1) Whether a complete decision should now be issued on the aesthetic impact of the bridge rather than waiting to see whether the Intervenor purchase the five lots; and 2) whether--if the Board decides that a complete decision on all aspects of the project should be rendered now--the Board should review the proposed bridge under Criterion 8 or remand to the Commission for findings and a decision. On November 3 the Board conducted a deliberative session on these preliminary issues. This matter is now ready for decision.

DECISION

The Board agrees with the Applicants that they are entitled to a decision on the bridge at this time. There is no dispute that they submitted a complete application to the Commission that contained very detailed plans for the bridge proposal and which the Commission apparently reviewed. Since the subdivision of the five lots and construction of the bridge as proposed may still occur, the Board believes that the Applicants are entitled to have their application reviewed and to receive a decision on that application.

The Board does not believe that the Applicants have given up full legal control of their property by entering into an option agreement with the Intervenor. The identity of the purchasers of lots is irrelevant to whether a permit should be issued. The Commission reviewed the Applicants' proposal for subdividing eight lots and in fact issued approval for such subdivision. Requiring the Applicants to go through additional proceedings and obtain an amendment when they sell the lots is unnecessary. An application must be reviewed in accordance with the information presented and available at the time of its review: subsequent actions that an applicant might take, such as deciding not to go forward with any part of the project or to sell lots to parties

different from those contemplated when the application was filed, are not germane to whether the project complies with the requirements of Act 250. If the project as proposed does comply, a permit should be issued. If the project--or any part thereof--does not comply, negative findings should be issued so that an applicant can make the necessary decisions on how to proceed.

The Board therefore concludes that a full decision should be rendered at this time on all aspects of the application.

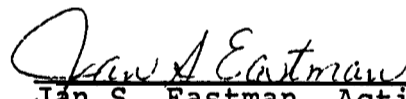
Because the Board has concluded that the Commission should have issued findings and a complete decision on the aesthetic impact of the bridge and on the five lots, this appeal will be remanded to the District Commission for the issuance of findings and a decision consistent with this decision. Act 250 contemplates that decisions will first be made by the District Commission and appealed to the Board for de novo review on those findings with which parties disagree. In re Juster Associates, 136 Vt. 577 (1978). Since the absence of findings can only be remedied by the Commission, the Board does not have jurisdiction to proceed with a review until the Commission has made findings and issued a decision. If the Commission issues findings and a decision favorable to the applicant, the need for an appeal is obviated.

ORDER

1. This appeal is hereby remanded to the District #5 Environmental Commission for the issuance of findings and a complete decision consistent with this decision.

Dated at Williston, Vermont this 8th day of December, 1987.

ENVIRONMENTAL BOARD


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